

METRO ILOILO WATER DISTRICT, PETITIONER, VS. FLO WATER RESOURCES [ILOILO], INC., RESPONDENT.

G.R. No. 238322. October 13, 2021

Ponente: ZALAMEDA, J.

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ZALAMEDA, J.:

The Court resolves instant petition for review on certiorari seeks to reverse and set aside the Decision dated 27 February 2018 of the Court of Appeals (CA) Cebu in CA-G.R. CEB SP No. 11053.[1] The CA denied petitioner's appeal assailing the arbitral award dated 25 May 2017,[2] issued by the ad hoc tribunal in the arbitration case docketed as Case No. 001-2015 entitled "Flo Water Resources (Iloilo), Inc. v. Metro Iloilo Water District."

Antecedents

Petitioner Metro Iloilo Water District (MIWD) is a government--owned and controlled corporation (GOCC) organized pursuant to Presidential Decree No. (PD) 198, as amended, for the purpose of supplying potable water within its franchise or service area covering Iloilo City and the Municipalities of Leganes, Pavia, Sta. Barbarra, Cabatuan, Maasin, San Miguel, and Oton, all within the province of Iloilo.[3]

In 2011, MIWD engaged in a Bulk Water Supply Project to supply potable water within its service area.[4] Pursuant thereto, it issued invitations to bid addressed to interested Bulk Water suppliers for Injection Point (IP) 2 (Barangay Tacas, Jaro, Iloilo City/ requiring 10,000 cubic meters per day) and IP 3 (from Leganes, Iloilo, to Jaro, Iloilo City/ requiring 15,000 cubic meters per day).[5]

Thereafter, a pre-bid conference was conducted on 09 February 2011 and the bidding proceeded on 17 May 2011 in accordance with the provisions of Republic Act No. (RA) 9184, otherwise known as the Government Procurement Reform Act (GPRA).[6]

In the bidding, Solarex emerged as the winner, and was issued a Notice of Award dated 29 June 2011.[7] Subsequently, Solarex, Prime Water, and Flo Water formed a joint venture corporation, herein respondent Flo Water Resources (Iloilo), Inc. (Flo Water).

On 24 August 2011, MIWD and Flo Water executed a Bulk Water Supply Contract (BWSC).[8] Likewise, a Notice to Proceed dated 12 September 2011 was issued to Flo Water,[9] by virtue of which it was to commence delivery for IP 3 within a period of six (6) months. Hence, MIWD and Flo Water coordinated with each other and undertook the design, fabrication, and construction works to ensure that IP 3 can receive 15,000 cubic meters per day in bulk water supply.[10]

MIWD raised that Flo Water was not able to meet the required volume, as it delivered approximately 6,000 cubic meters per day only. Later on, it was discovered that MIWD received only 6,000 cubic meters per day because the 200 mm transmission pipeline of IP 3 was incapacitated to transmit the full volume of 15,000 cubic meters per day. MIWD therefore alleged that IP 3 suffered a shortage of 9,000 cubic meters per day of potable water from 16

February 2013 to 30 April 2016.[11]

Notwithstanding the circumstances, Flo Water demanded payment for the 9,000 cubic meters per day volume of water, alleging that the BWSC is a "take or pay" contract. MIWD refused to pay Flo Water, arguing that it is only obligated to pay for the volume it actually received through IP 3. Because of this, Flo Water threatened to cut-off or had actually cut-off MIWD's water supply.[12]

MIWD sought the advice of the Office of the Government Corporate Counsel (OGCC), to confirm whether the BWSC is a "take or pay" contract. In an Opinion dated 06 May 2014,[13] the OGCC found that the BWSC is not a "take or pay" contract, as there is no provision which obliges MIWD to pay for the minimum guaranteed volume even if undelivered.[14]

As a response, Flo Water sought the reconsideration of the OGCC Opinion, which was referred to the Department of Justice (DOJ). Pending resolution by the DOJ, the parties entered into a Supplemental Agreement on 17 August 2014 whereby they agreed to comply with the findings set forth in the DOJ Opinion.[15]

In an Opinion issued on 04 November 2014, the DOJ found merit in Flo Water's arguments. It determined the intention of the parties by studying the invitation to bid, the terms of reference, the draft contract, and other bid documents which expressly state the minimum volume requirement. It found that MIWD is still bound to pay for the 15,000 cubic meters per day as there was a reasonable expectation that IP 3 had the technical capacity to accept it. The DOJ added that Flo Water was capacitated to transmit the minimum volume, but MIWD was not able to ensure that IP 3 can accommodate the same. However, since public funds will be used as MIWD is a GOCC, the DOJ stated that it must be ensured that the amount to be paid shall not be excessive or unconscionable.[16]

As MIWD still refused to pay, Flo Water served on MIWD a Demand for Arbitration dated 21 April 2015, pursuant to Article XVI of the BWSC.[17] On 21 May 2015, MIWD filed its Reply agreeing to enter into arbitration proceedings.

Ruling of the Ad Hoc Tribunal

On 25 May 2017, the ad hoc tribunal issued the Arbitral Award,[18] which ordered MIWD to pay Flo Water P164,542,623.75 representing the unpaid principal amount (plus stipulated interest of 12% per annum) for the bulk water supplied from 16 February 2013 up to 20 April 2016. It found that the BWSC is a "take or pay" contract, to wit:

It is a basic principle in contract law in this jurisdiction that the intention of the parties to a contract shall prevail when the express terms and conditions of the contract suffer from any ambiguity. Hence, the ambiguity in the terms and conditions of the BWSC, either caused by the ostensible lack of express "take-or-pay" designations or otherwise, should be resolved by looking to [sic] the evident intention of the parties in entering into the BWSC.

In this regard, the Arbitral Tribunal finds that it was the intention of the Parties to enter into a take-or-pay contractual arrangement, through their contemporaneous and subsequent acts. In particular, the following acts of MIWD, which were contemporaneous or subsequent to the execution of the BWSC, must be considered: (1) [T]he amount of liquidated damages assessed and enforced against Flo Water by MIWD was computed using the formula set forth in Article XIV, Section 1 of the BWSC, which explicitly uses 15,000 cu.m./day as base. Thus, MIWD clearly intended to accept delivery of, and/or pay for, bulk water in the volume of 15,000 cu. m./day when it considered to be the minimum guaranteed volume of water subject of the BWSC; (2) [A]side from liquidated damages against Flo Water on the basis of the formula set forth in Article XIV, Section 1 of the BWSC, MIWD also applied for interim measures of protection in [sic] July 2015 with the Regional Trial

Court in relation to these arbitration proceedings. The interim relief prayed for by MIWD sought to compel Flo Water to deliver bulk water volume amounting to 15,000 cu. m./day. This confirms that MIWD had the intention to pay for and compel delivery of bulk in the volume of 15,000 cu. m./day as the minimum guaranteed volume of which it could compel delivery, and for which it had the obligation to pay pursuant to the terms and conditions of the BWSC.

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Plainly, the technical incapacity and deficiency of Injection Point No. 3 was the precise reason MIWD failed to accept the delivery of the contested 9,000 cu. m./day bulk water and the direct cause for Flo Water's failure to deliver the said bulk water volume. Consequently, Flo Water should not suffer from the consequences of MIWD's failure to accept the 9,000 cu. m./day bulk water volume and be deemed to have delivered the entire guaranteed maximum volume of 15,000 cu. m./day. Under Article 1186 of the New Civil Code a condition in a contract shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment. Thus, MIWD is obliged to pay Flo Water for the whole volume of 15,000 cu. m./day of bulk water delivered to MIWD from February 16, 2013 to April 30, 2016.[19] (Citations omitted)

Aggrieved, MIWD filed a petition for review with the CA under Rule 43 of the Rules of Court.[20]

Ruling of the CA

On 27 February 2018, the CA promulgated its assailed Decision denying the petition for review filed by MIWD, viz:

WHEREFORE, the petition is DISMISSED. The Arbitral Award dated 25 May 2017 issued by the Ad Hoc Tribunal in Iloilo City in the arbitration case docketed as Case No. 01-2015 entitled "Flo Water Resources (Iloilo), Inc. v. Metro Iloilo Water District," ordering petitioner Metro Iloilo Water District to pay respondent Flo Water Resources (Iloilo), Inc. the amount of One Hundred Sixty-Four Million Five Hundred Forty--Two Thousand Six Hundred Twenty-Three Pesos and Seventy-Five Centavos (P164,542,623.75) representing the unpaid principal amount (plus stipulated interest of 12% per annum) for the bulk water supplied by Flo Water from 16 February 2013 up to 20 April 2016 is hereby AFFIRMED.

SO ORDERED.[21] (Emphasis on the original)

The CA held that MIWD availed of the wrong remedy by filing a petition pursuant to Rule 43 of the Rules of Court, in relation to the GPRA, and its 2016 Implementing Rules and Regulations. Citing *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*,[22] it explained that "an arbitral award is not appealable via Rule 43 because: (1) there is no statutory basis for an appeal from the final award of arbitrators; (2) arbitrators are not quasi-judicial bodies; and (3) the Special ADR Rules specifically prohibit the filing of an appeal to question the merits of an arbitral award."

As such, the CA stated that MIWD should have filed a petition to vacate or to modify/ correct the award with the RTC, not later than thirty (30) days from receipt of the award.

Without filing a motion for reconsideration with the CA, MIWD filed this present petition with this Court.

Issues

The essential issues for resolution in this case are: (1) whether the CA erred when it ruled that MIWD availed of the wrong remedy by filing a petition under Rule 43 of the Rules of Court; and (2) whether the CA erred when it affirmed the arbitral award.

Ruling of the Court

In support of its petition, MIWD argues that filing a petition under Rule 43 of the Rules of Court is allowed

pursuant to Section 60 of the GPRA. MIWD adds that the CA erred when it affirmed the tribunal's finding that the BWSC is a "take or pay" contract, and when it failed to incorporate in its decision the ruling of the tribunal that the money claim of Flo Water should be addressed to the Commission on Audit (COA). Lastly, it raised that awarding Flo Water the amount of P164,542,623.75 will amount to unjust enrichment.[23]

On the other hand, Flo Water argues that MIWD's petition was correctly dismissed for being an improper remedy to assail the arbitral award. Even if considered a correct remedy, Flo Water contends that the appeal should still be dismissed by this Court for raising questions of fact. As to the substantial matters, Flo Water maintains that the BWSC is a "take or pay" contract. It also added that it has already filed a petition for money claim before the COA on 03 September 2018, to enforce the arbitral award.[24] Moreover, it states that there is no unjust enrichment as it was MIWD which was remiss in its obligation to ensure the capacity of IP 3.

Flo Water raised that it filed a petition for confirmation of the arbitral award with the RTC on 18 August 2017.[25] As it was granted by the RTC,[26] MIWD appealed the same to the CA. On 23 May 2018, the appeal of MIWD was dismissed by the CA due to procedural technicalities (i.e., violation of certification against non-forum shopping).[27] As MIWD no longer filed a motion for reconsideration, Flo Water raised that it had become final and executory on 07 July 2018 as evidenced by the entry of judgment.[28]

The petition is unmeritorious.

On the first issue, the CA was correct in dismissing MIWD's petition on the basis that it availed of the wrong remedy.

Effective on 26 January 2003, the GPRA provides the mode of settlement of disputes from the implementation of a contract covered by the Act:

SEC. 59. Arbitration. – Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution.

SEC. 60. Appeals. – The arbitral award and any decision rendered in accordance with the foregoing Section shall be appealable by way of a petition for review to the Court of Appeals. The petition shall raise pure questions of law and shall be governed by the Rules of Court.

Thereafter, RA 9285, otherwise known as the Alternative Dispute Resolution Act of 2004 was enacted. Section 41 thereof provides that a domestic arbitral award may be questioned before the RTC in accordance with the rules of procedure to be promulgated by the Supreme Court based only on the grounds enumerated under Section 25 of RA 876.

Subsequently, the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules) took effect on 30 October 2009. It expressly provides that "a party to an arbitration is precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award." [29]

However, to question an arbitral award, the Special ADR Rules allow the filing of a petition to vacate or correct/modify before the RTC based on specific grounds stated under Rule 11.4 thereof.[30] Accordingly, the Special ADR Rules provide that an appeal to the CA through a petition for review shall only be allowed from the final orders of the RTC listed under Rule 19.12 of the Special ADR Rules, which includes an order confirming,

vacating or correcting/modifying a domestic arbitral award.

Due to the above quoted provisions, there is a need to clarify the remedy available to parties in cases where both the GPRA and the Special ADR Rules apply. The pronouncement of this Court in *Metro Bottled Water Corp. v. Andrada Construction & Development Corp. Inc.*[31] (*Metro Bottled Water Corp.*) can give guidance:

While there is uniformity between appeals of the different quasi-judicial agencies, Rule 43 does not automatically apply to all appeals of arbitral awards. *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation* has since distinguished between commercial arbitration, construction arbitration, and voluntary arbitration under Article 219 (n) of the Labor Code. *Fruehauf Electronics Philippines Corporation* declared that commercial arbitration tribunals are not quasi-judicial agencies, but "purely ad hoc bodies operating through contractual consent and as they intend to serve private, proprietary interests." A commercial arbitration tribunal is a "creature of contract" that becomes *functus officio* once the arbitral award attains finality.

However, the jurisdiction of construction arbitration tribunals and voluntary arbitrators is vested by statute. This jurisdiction exists independently of the will of the contracting parties due to the public interest inherent in their respective spheres[.] (Emphasis supplied and citations omitted)

From the foregoing, it may be discernible that a petition under Rule 43 of the Rules of Court may be filed depending on the nature of the ad hoc tribunal which renders the award. If it is a quasi-judicial agency such as the Construction Industry Arbitration Commission mentioned in Section 59 of the GPRA,[32] a petition under Rule 43 of the Rules of Court may be filed with the CA. However, if it is an ad hoc tribunal formed merely through the consent of the parties, Rule 43 of the Rules of Court will not apply.

Here, it is undeniable that the ad hoc tribunal was formed pursuant to the BWSC and the parties' mutual consent. Therefore, it is not a quasi-judicial agency, as quasi-judicial jurisdiction cannot be conferred on a tribunal by mere agreement of the parties.[33] Thus, as clarified in the *Metro Bottled Water Corp.* case, the arbitral award rendered by the ad hoc tribunal cannot be appealed via Rule 43 of the Rules of Court.

Although *MIWD* is correct in its argument that the right to appeal may be treated as a substantive right, we emphasize that this is a mere statutory privilege which must be exercised only in the manner and in accordance with the law.[34] In any case, a party aggrieved from the issuance of an arbitral award by an ad hoc tribunal is not without remedy, as a petition to vacate, or to correct/ modify may be filed with the RTC.

Technicalities aside, the CA did not err when it affirmed the arbitral award.

It is established that courts are called to exercise judicial restraint and deference when asked to review the findings of arbitral tribunals,[35] to avoid defeating the purpose of arbitration. The Court has taken the opportunity to expound on this in the case of *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*:[36]

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party

of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.[37] (Citations omitted)

Notably, the issues raised by MIWD primarily question the ad hoc tribunal's finding that the BWSC is a "take or pay" contract. It is clear however that this goes into the merits of the arbitral award and discussing the same would necessarily lead to a review of not only the legal conclusions, but also the factual findings of the ad hoc tribunal.

In this case, MIWD failed to show that the findings of the ad hoc tribunal were arrived at unjustly or unfairly. Hence, this Court is bound to exercise judicial restraint and deference. To reiterate, mere errors of law and fact are insufficient to invalidate an arbitral award fairly made, since "any other rule would make an award the commencement, and not the end, of litigation." [38]

ACCORDINGLY, the Petition is DENIED. The assailed Decision dated 27 February 2018 of the CA in CA-G.R. CEB SP No. 11053 is AFFIRMED. Petitioner Metro Iloilo Water District is ordered to pay respondent Flo Water Resources (Iloilo), Inc. the amount of One Hundred Sixty-Four Million Five Hundred Forty-Two Thousand Six Hundred Twenty-Three Pesos and Seventy-Five Centavos (P164,542,623.75) representing the unpaid principal amount (plus stipulated interest of 12% per annum) for the bulk water supplied by Flo Water Resources (Iloilo), Inc. from 16 February 2013 up to 20 April 2016.

SO ORDERED.

Leonen, (Chairperson), Rosario, and Dimaampao, [**] JJ., concur.
Carandang, [*] J., on leave.

[*] Carandang, J., on official leave per Special Order No. 2851 dated 07 October 2021.

[**] Dimaampao, J., designated additional member per Special Order no. 2839.

[1] Rollo, Vol. 1, pp. 47-61; penned by Associate Justice Louis P. Acosta and concurred in by Associate Justices Edgardo L. Delos Santos (a retired Member of this Court) and Edward B. Contreras.

[2] Id. at 126-186.

[3] Id. at 12.

[4] Id. at 408-512.

[5] Id. at 12-13.

[6] Id. at 13.

[7] Rollo, Vol. 2, p. 892.

[8] Rollo, Vol. 1, pp. 62-78.

[9] Rollo, Vol. 2, p. 893.

[10] Rollo, Vol. 1, pp. 14-15.

[11] Id. at 15.

[12] Id. at 15-16.

[13] Id. at 97-103.

[14] Id. at 18 and 102.

[15] Id. at 94-96.

[16] Id. at 104-125.

[17] XVI. DISPUTES AND JURISDICTION

Any dispute, controversy or claim arising out of or relating to this contract or the breach, termination, or invalidity thereof, if the same cannot be settled amicably, may be submitted for arbitration in accordance with Republic Act 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004" and the place of arbitration shall be in the City of Iloilo, Philippines, otherwise said dispute or controversy arising out of the contract or breach thereof shall be submitted to a court of law in Iloilo City to the exclusions of all other venue.

[18] Rollo, pp. 126-186.

[19] Id. at 175-179.

[20] Id. at 187-209.

[21] Id. at 60-61.

[22] 800 Phil. 721 (2016).

[23] Rollo, Vol. 1, pp. 52-53.

[24] Rollo, Vol. 2, p. 1306.

[25] Id. at 1455-1461.

[26] Id. at 345-353.

[27] Id. at 1550-1552.

[28] Id. at 1554.

[29] A.M. No. 07-11-08-SC, Rule 19.7.

[30] Rule 11.4. Grounds. - (A) To vacate an arbitral award. - The arbitral award may be vacated on the following grounds:

- a. The arbitral award was procured through corruption, fraud or other undue means;
- b. There was evident partiality or corruption in the arbitral tribunal or any of its members;
- c. The arbitral tribunal was guilty of misconduct or any form of misbehavior that has materially prejudiced the rights of any party such as refusing to postpone a hearing upon sufficient cause shown or to hear evidence pertinent and material to the controversy;
- d. One or more of the arbitrators was disqualified to act as such under the law and willfully refrained from disclosing such disqualification; or
- e. The arbitral tribunal exceeded its powers, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter submitted to them was not made.

The award may also be vacated on any or all of the following grounds:

- a. The arbitration agreement did not exist, or is invalid for any ground for the revocation of a contract or is otherwise unenforceable; or

b. A party to arbitration is a minor or a person judicially declared to be incompetent.

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(B) To correct/modify an arbitral award. - The Court may correct/modify or order the arbitral tribunal to correct/modify the arbitral award in the following cases:

- a. Where there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
- b. Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted;
- c. Where the arbitrators have omitted to resolve an issue submitted to them for resolution; or
- d. Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the Court.

[31] G.R. No. 202430, 06 March 2019, citing *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, *supra* at note 13.

[32] *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Tri Joint Venture*, 818 Phil. 27 (2017).

[33] *Fruehauf Electronics Philippines Corp. v. Technology Electronics Assembly and Management Pacific Corp.*, *supra* at note 13.

[34] *Tirol, Jr. v. Del Rosario*, 376 Phil. 115 (1999).

[35] *Global Medical Center of Laguna, Inc. v. Ross Systems International, Inc.*, G.R. Nos. 230112 & 230119, 11 May 2021.

[36] 298-A Phil. 361 (1993).

[37] *Id.* at 373-374.

[38] *Asset Privatization Trust v. Court of Appeals*, 360 Phil. 768 (1998).

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